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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 IMHOTEP JORDAN, Jr.,  
12 aka JOHN JORDAN,  
13 CDCR #C-71742,

Plaintiff,

14  
15 vs.

16 E. LLOYD,

17  
18 Defendant.  
19

Civil No. 11cv2031 MMA (POR)

**ORDER:**

**(1) DISMISSING CIVIL ACTION  
FOR FAILING TO PAY FILING  
FEES AND FOR FAILING TO  
MOVE *IN FORMA PAUPERIS*; AND**

**(2) DISMISSING ACTION AS  
FRIVOLOUS PURSUANT TO 28  
U.S.C. § 1915A**

20 Plaintiff, currently incarcerated at Calipatria State Prison, in Calipatria, California, and  
21 proceeding pro se, has filed a civil action entitled “Instrument of Clarification of the Private  
22 Legal Process” [ECF No. 1].

23 **I. FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS**

24 Any party instituting a civil action, suit or proceeding in a district court of the United  
25 States, other than a writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C.  
26 § 1914(a). An action may proceed despite a party’s failure to pay only if the party is granted  
27 leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See Andrews v.*  
28 *Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th

1 Cir. 1999). However, Plaintiff has not prepaid the \$350 filing fee required to commence a civil  
 2 action; nor has he submitted a Motion to Proceed IFP. Therefore, the case must be dismissed  
 3 pursuant to 28 U.S.C. § 1914(a).

## 4 **II. Initial Screening per 28 U.S.C. § 1915A(b)**

5 The Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915A, obligates the Court to  
 6 review complaints filed by anyone “incarcerated or detained in any facility who is accused of,  
 7 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions  
 8 of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after  
 9 docketing” and regardless of whether the prisoner prepays filing fees or moves to proceed IFP.  
 10 See 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss prisoner complaints, or any  
 11 portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief may  
 12 be granted. 28 U.S.C. § 1915A(b); *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000).

13 While Plaintiff’s action is far from clear, Plaintiff is apparently seeking to sue a District  
 14 Court Clerk. Plaintiff refers to himself as a “free born living breathing flesh and blood neter  
 15 [god] created sovereign sentient being” and seeks to “clarif[y] the private legal process.”  
 16 (Compl. at 1.) A complaint is frivolous “where it lacks an arguable basis either in law or in  
 17 fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Here, the Court finds Plaintiff’s claims to  
 18 be frivolous under § 1915A because they lack even “an arguable basis either in law or in fact,”  
 19 and appear “fanciful,” “fantastic,” or “delusional.” *Neitzke*, 490 U.S. at 325, 328. Thus, the  
 20 Court dismisses the entirety of Plaintiff’s Complaint as frivolous pursuant to 28 U.S.C. § 1915A.

## 21 **II. CONCLUSION AND ORDER**

22 For the reasons set forth above, the Court hereby:

23 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350  
 24 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

### 25 **IT IS FURTHER ORDERED that:**

26 (2) Plaintiff’s Complaint is **DISMISSED** as frivolous pursuant to 28 U.S.C. § 1915A.  
 27 Moreover, because the Court finds amendment of Plaintiff’s claims would be futile at this time,  
 28 leave to amend is **DENIED**. See *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir.

1 1996) (denial of a leave to amend is not an abuse of discretion where further amendment would  
2 be futile); *see also Robinson v. California Bd. of Prison Terms*, 997 F. Supp. 1303, 1308 (C.D.  
3 Cal. 1998) (“Since plaintiff has not, and cannot, state a claim containing an arguable basis in  
4 law, this action should be dismissed without leave to amend; any amendment would be futile.”)  
5 (citing *Newland v. Dalton*, 81 F.3d 904, 907 (9th Cir. 1996)).

6 (3) Further, this Court **CERTIFIES** that any IFP appeal from this Order would not  
7 be taken “in good faith” pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v. United States*, 369  
8 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent appellant  
9 is permitted to proceed IFP on appeal only if appeal would not be frivolous).

10 (4) The Clerk of Court shall close the file.

11 **IT IS SO ORDERED.**

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13 DATED: September 6, 2011

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15 Hon. Michael M. Anello  
16 United States District Judge  
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